

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

MARK RADCLIFFE,

Petitioner,

v.

CIVIL ACTION NO. 5:17-cv-04045
(Criminal No. 5:16-cr-00019-02)

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

The Court has reviewed the *Movant's Motion to Reconsider the Court's 2255 Ruling* (Document 281), as well as the *Request for Certificate of Appealability* (Document 283).

The Petitioner was convicted of conspiracy to tamper with a witness on October 20, 2016, following a jury trial. He filed a motion pursuant to 28 U.S.C. § 2255 on September 26, 2017, asserting that his conviction was tainted by the use of false testimony, *Brady* violations, prosecutorial misconduct, and ineffective assistance of counsel. On November 12, 2019, the Court entered a *Memorandum Opinion and Order* (Document 278), adopting the Magistrate Judge's proposed findings and conclusions and dismissing the Petitioner's § 2255 motion.

Rule 59(e) of the Federal Rules of Civil Procedure permits a motion to alter or amend a judgment within 28 days of the entry of judgment. The Fourth Circuit has "recognized that there are three grounds for amending an earlier judgment: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403

(4th Cir. 1998). “Rule 59(e) motions may not be used, however, to raise arguments which could have been raised prior to the issuance of the judgment, nor may they be used to argue a case under a novel legal theory that the party had the ability to address in the first instance.” *Id.* The Fourth Circuit has further cautioned that reconsideration after entry of judgment should be used sparingly. *Id.*

The Petitioner’s motion for reconsideration presents essentially the same arguments as his § 2255 motion and the objections to the PF&R. The Court considered those arguments in the opinion overruling the objections, adopting the PF&R, and dismissing the Petitioner’s § 2255 motion.

Wherefore, after careful consideration, finding that the Petitioner has not met the standard applicable to Rule 59(e) motions for reconsideration, and for the reasons set forth in the *Memorandum Opinion and Order* previously entered in this matter, the Court **ORDERS** that the *Movant’s Motion to Reconsider the Court’s 2255 Ruling* (Document 281) be **DENIED**. To the extent the *Request for Certificate of Appealability* (Document 283) is directed to this Court, the Court **ORDERS** that it be **DENIED**, again finding that the Petitioner has presented no new factual evidence or legal authority to disturb the Court’s previous assessment that he has not satisfied the applicable standard.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to the Clerk of the United States Court of Appeals for the Fourth Circuit, to counsel of record, and to any unrepresented party.

ENTER: January 2, 2020



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA